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IN THE
SUPREME COURT OF THE
UNITED STATES

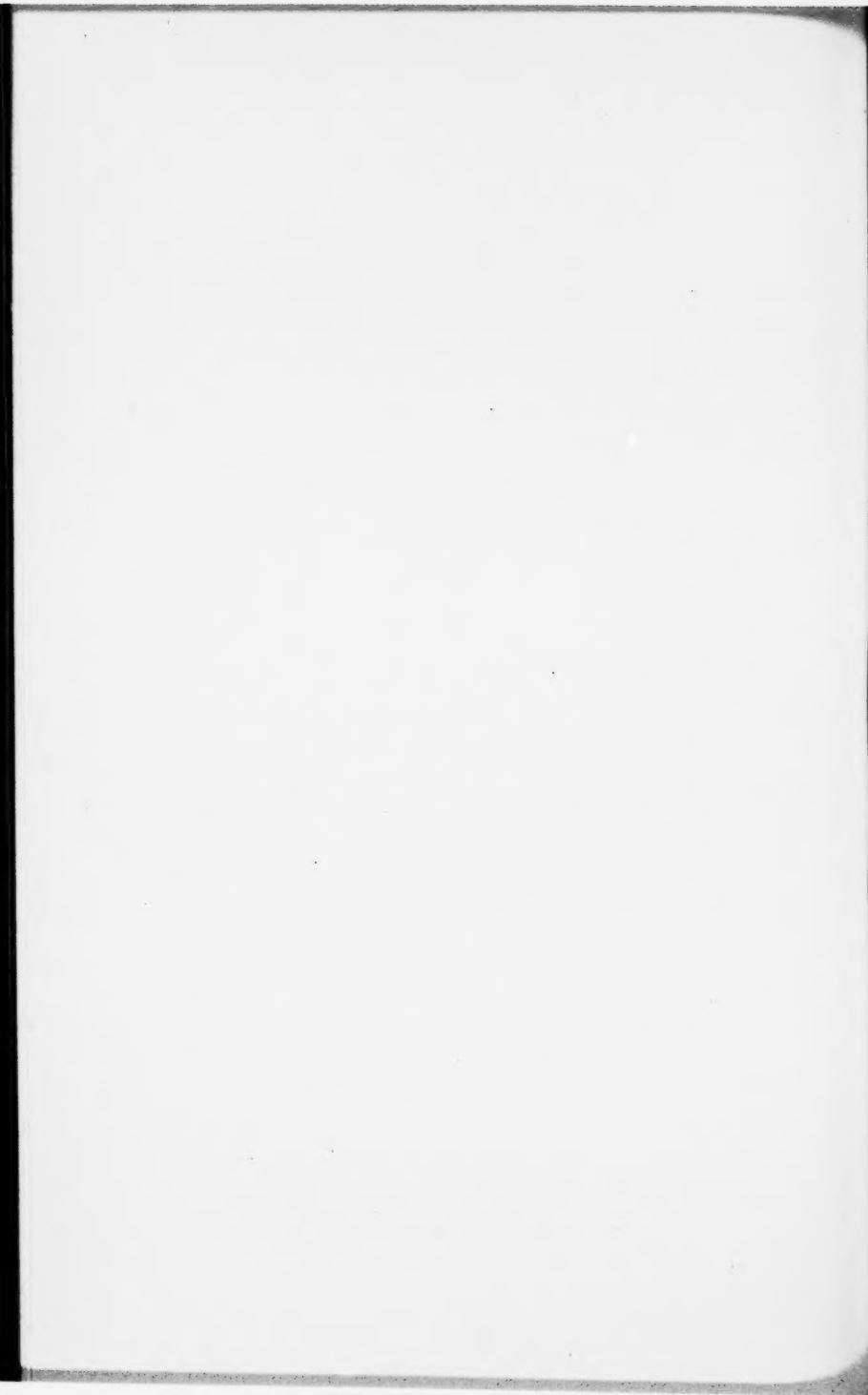
OCTOBER TERM, 1944

No. 930

PAUL FRANZ FREDERICK, *Petitioner*,
v.
UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals,
For the Fifth Circuit,
AND BRIEF IN SUPPORT THEREOF

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No. _____

PAUL FRANZ FREDERICK, *Petitioner*,
v.
UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI

*To the Honorable Chief Justice of the United States and the
Associate Justices of the Supreme Court of the United
States:*

Petitioner, Paul Franz Frederick, respectfully prays for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, to review a Judgment of that Court entered on December 13th, 1944, convicting Petitioner of a violation of Subdivision 18, Sec. 746, Title 8, U. S. C. A., Naturalization Act of 1940.

A Petition for Rehearing was denied on January 15th, 1945.

Statement

Petitioner lawfully entered the United States on November 14th, 1923, and has resided continually in this country. He

is married to an American born lady, and has four children of this marital union attending the Public Schools in Houston, Texas. At the time of the return of the first indictment, he was employed as a tool designer at Hughes Tool Company, Houston, Texas, where he had been so employed for about eight years (R. 137). Being a property owner in the City of Houston, State of Texas, and having rendered the same for tax purposes, he was required, under the Constitution and Statutes of the State of Texas, to purchase and pay for a Poll Tax, the payment of which is evidenced by a poll tax receipt (Arts. 2959-2977, 7046, VERNON'S CIVIL STATUTES OF THE STATE OF TEXAS ANNOTATED). In December, 1941, Petitioner, as he was required to do, purchased a poll tax for his wife and himself (R. 148, 149).

In January, 1943, Petitioner presented himself to the immigration authorities in Houston, Texas, with a view of securing his final naturalization papers (R. 166); having married a lady born in the United States, it was ^{NOT} necessary for him to secure his first papers.

On March 15th, 1943, Petitioner was indicted on two counts:

- (a) Falsely representing himself to be a citizen of the United States, before a Deputy Assessor of Taxes of Harris County, Texas, in applying for a POLL TAX;
- (b) Falsely representing himself to be a citizen of the United States, before an Election Judge of Precinct No. 1, of Harris County, Texas, in applying for a ballot to vote (R. 3-5).

This cause was tried before JUDGE T. M. KENNERLY (a jury having been waived), on June 24th, 1943. Petitioner was found guilty on the First Count, and acquitted on the Second Count (50 F. Supp. 769).

The Trial Court granted Petitioner a new trial upon the basis of the following letter from the Government's principal witness at this and the succeeding prosecution:

"Dear Judge Kennerly:

"My testimony having convicted Mr. Frederick leaves me in a most unhappy state. I was told that they had a lot of other things against him, when actually, as far as I have learned, they did not produce one new thing against him. I was under the impression he was a real enemy alien. What I testified was true, but had I not been disillusioned about it, I could have confined my testimony to answering the questions asked me.

"I believe Mr. Frederick is innocent for this reason: I have checked the old records and find that every year Mr. Frederick would render his property and attach one (only) Poll Tax to the rendition, that being for his wife. I fully believe, after talking to Mrs. Kaser and one of his neighbors that he had talked with someone who had convinced him that being a property owner, he was entitled to vote in the water election down there. I know it would be easy to get confused about the rules and laws, for one like him.

"I have a boy in the navy, and I sincerely hope that if he ever finds himself in enemy territory he won't be treated so harshly, for one slight step.

"Your Honor, I would like for you to consider this: On his 1941 inventory, he rendered one poll tax for his wife, but through error it was left off the roll and off his tax notice. Had this not happened, it might have led to a different outcome of things.

"Then I didn't have him swear to anything. It is a fact that many deputies selling poll taxes would sell a man a poll tax if he said he had his first papers.

"I listen to your (Sunday School) class every Sunday morning (on the radio), and I know you are as anxious as I am to help him, if there is a way. Rather than make an example out of him, for there are many others who have repeated the same offense, let's let this be the be-

ginning of more strict regulations in writing and obtaining poll taxes and in writing the reports and poll lists, something I have always hoped to see. For 14 years I have worked, kept house and supported and reared my children, deserted by my husband. Please help me; I can not do this to Mrs. Frederick and her three children. (Emphasis supplied.)

Very sincerely,
Mrs. Bennita Blissard."

On September 9th, 1943, Petitioner was again indicted, the charge being that he "unlawfully represented himself to be a citizen of the United States of America in applying to an Election Judge at Price's Service Station for a ballot to vote in an election for School Trustee * * * " (R. 5-6).

Upon the second trial (both causes being consolidated), a jury having been waived, the Trial Court (JUDGE HANNAY) found Petitioner guilty on Count I of the previous indictment (8534) and guilty on the Count as charged in the latter indictment (8690); and sentenced him to sixty days in an institution designated by the Attorney General (R. 23).

Petitioner contends that the Government failed to prove *beyond a reasonable doubt* that for the purpose of voting in a local School Board Trustee election for the Clover Leaf Addition, an addition to the City of Houston, Texas, he falsely represented himself as a citizen of the United States.

Petitioner further contended that proof of his having secured a Poll Tax, and presenting himself to vote in an election for School Trustees, without more, was insufficient to sustain the burden imposed upon the Government.

Petitioner's contention that there was no relevant proof that he violated the Statute in question, or any other law, requires an analysis of the evidence. As to this the Circuit Court of Appeals said that "the evidence leaves us with more dubiety than certainty * * * ."

The only evidence as to the procuring of the Poll Tax re-

ceipt was that of witness Mrs. Blissard. She testified that she asked Petitioner if he was naturalized, and that Petitioner answered in the affirmative (R. 46). Later on in her testimony (R. 210) the same witness stated that people were "ten or twelve feet deep at the windows and there are about fifteen windows there, you can imagine how noisy it is." This witness said, "At this point I didn't say, are you a naturalized citizen of the United States. I merely raised my eyes and said, 'You are naturalized?' and he said 'Yes.'" But in response to the next question this witness says that when she asked him the question "you are naturalized?" * * * "he nodded his head."

Witness Kiser (R. 195) testified that she has known Petitioner eight years, and knows that he "has difficulty in hearing at times, due to some impediment in his hearing. He is not entirely deaf, but he has great difficulty in hearing." This apparent deafness is quite obvious in the record. During the course of the trial, he does not hear his attorney's questions, and has to have them repeated (R. 136, 140, 145).

The only evidence as to Petitioner presenting himself, at a voting place in the local School Trusteeship Election, was that of Mrs. Blevins. She testified that Petitioner was at the voting place on the occasion in question. Nobody else saw Petitioner there. Petitioner says that he "doesn't recall" but that his wife says he was there (R. 154, 156). Witness Blevins and Petitioner were on opposite sides in a bitter neighborhood election squabble (R. 178-179; 74). There is no evidence whatever, except Mrs. Blevins' word, that Frederick appeared at the polls and presented his poll tax receipt. The Poll Tax showing he voted was never presented in evidence; and there is no evidence except this witness' word that he actually did appear to vote at this election.

Nowhere in the record is there any evidence of anybody stating that Petitioner ever represented himself as a citizen

of the United States. Witness Marks (R. 96-97) did state that Petitioner told him (Marks) that he (Petitioner) was a citizen, and exhibited a Poll Tax receipt to prove it. But this was alleged to have occurred April 3rd, 1941, and the first Poll Tax Petitioner ever bought, as the Government admits, was December 27th, 1941. The Government has carefully avoided the Marks' testimony, for obviously such witness is mistaken. Many witnesses testified that Petitioner has always told them he was *not* a citizen. Petitioner registered as an alien December 5th, 1940 (Cf. insert R. 83) and as an enemy alien February 12, 1942 (R. 90-91).

Petitioner contended that the burden to establish that he knowingly and falsely claimed citizenship and that he had represented himself as a citizen unlawfully, was upon the Government, and not upon him. Further, that the competent evidence in this cause utterly failed to meet the burden imposed upon the Government.

The Circuit Court of Appeals, although holding that this cause amounted to "a witch hunt," and "the evidence leaves us with more dubiety than certainty * * *," affirmed the judgment of the Trial Court.

Jurisdiction

This Court has jurisdiction under JUDICIAL CODE, Section 240, Subdivision (A), as amended by the Act of February 13th, 1925, Title 28, Section 347 (A), U. S. Code.

Opinion of the Court Below

The opinion of the Circuit Court of Appeals for the Fifth Circuit has not been officially reported. It appears at pages 214-215 of the Record. Since the opinion is extremely short, we take the liberty of quoting the entire opinion at this point:

"OPINION OF THE COURT—FILED—December 13, 1944
IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

—
No. 11018
—

Paul Franz Frederick, Appellant,
versus
United States of America

—
Appeal From the District Court of the United States
for the Southern District of Texas
—

(December 13, 1944)
—

Before HUTCHESON, WALLER AND LEE,
Circuit Judges.

WALLER, Circuit Judge: Appellant, a German alien, was convicted of falsely representing himself to be a citizen of the United States in applying for a poll tax receipt and in applying for a ballot to vote.

The case is suggestive of a witch hunt, and even though the evidence leaves us with more dubiety than certainty ^{judge acting} we are unable to say that the verdict of the ~~jury was~~ in the absence of a jury, which was waived, was not supported by sufficient evidence to sustain it, nor can we say that it is contrary to law.

The fact that the judge who tried Appellant the first time granted a new trial and that the judge who tried him the next time sentenced Defendant to only sixty days suggests that we are not the only ones unimpressed with the case as made against the Defendant.

The case is affirmed, but without prejudice to the right of Defendant to apply within thirty days of the receipt of the mandate to the lower Court for a suspension, or reduction of sentence.

AFFIRMED."

Questions Presented

Whether a conviction for an alleged false claim of United States citizenship shall be permitted to stand when:

1. A domiciled resident and property owner of the State of Texas is by the Constitution and laws of that State required to purchase a poll tax, irrespective of whether such person is a citizen or not;

2. The Circuit Court of Appeals finds as a fact that "the evidence leaves us with more dubiety than certainty * * *";

3. It is the fundamental law of the land that to justify a conviction in a criminal case, the person so charged must be found guilty, "beyond a reasonable doubt."

4. There is no relevant evidence from which the Trial Court could rightly find that because Petitioner purchased and possessed a Poll Tax Receipt, coupled with the alleged presenting of such receipt, constituted representation of the Petitioner to be a citizen;

5. The evidence was as consistent with innocence as with guilt; and

6. The circumstantial evidence did not exclude every reasonable hypothesis of innocence.

Reasons Relied Upon For the Allowance of the Writ

1. There is here presented for decision an important question of Federal law which has not been, but should be, settled by this Court. Whether a finding of the Circuit Court of Appeals that "the evidence leaves us with more dubiety than certainty, * * * " justifies the affirmation of a judgment in a criminal case.

2. Because the questions urged by Petitioner raise an im-

portant question with reference to the sufficiency of evidence on which the guidance of this Court will be of benefit to all inferior Federal Courts.

3. Because the Circuit Court of Appeals for the Fifth Circuit has decided an important question of Federal law in a manner which conflicts with the decisions of this Honorable Court, and of other circuits, notably those of the Supreme Court of the United States in *WARSZOWER v. U. S.*, 312 U.S. 342; *U. S. v. CLASSIC, ET AL.*, 313 U.S. 299; *FOTIE v. U. S.* (8 Cir.), 137 Fed. (2d) 831, and *BENN v. U. S.* (9 Cir.), 21 Fed. (2d) 962.

In these cases the well established rule was followed, that guilt can only be determined by showing that a Defendant has been so found "beyond a reasonable doubt."

In the case at bar for the first time, a qualification has been written into that rule in that the Circuit Court of Appeals affirmed the judgment of the Trial Court notwithstanding the fact that the Circuit Court found as a fact that "the evidence leaves us with more dubiety than certainty, * * * " "The case is suggestive of a witch hunt * * * " " * * * we are not the only ones unimpressed with the case as made against the Defendant." No such limitation has heretofore been stated in any decided case, and it is contrary not only to the holdings in the cases cited, but destroys the purpose and functions of an appeal, and violates every concept of justice.

4. Because the case involves a question of gravity and general importance which it is in the public interest to have decided by the Court of last resort. The question involved is far reaching in its application and importance. The decision of the Circuit Court of Appeals affects every person charged with a criminal offense in Federal Court, and constitutes a challenge to the integrity of our judicial processes.

5. A review of the decision of the Court below is of importance in the administration of the Section of the Naturalization Act of which this Petitioner stands charged with a violation.

6. Because of the importance in the administration of justice of the problem raised.

Prayer

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and the proceedings of the Circuit Court of Appeals had in the case numbered and entitled on its docket 11,018, Paul Franz Frederick, Appellant, v. United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such further relief as this Court may deem proper.

PAUL FRANZ FREDERICK,
Petitioner,

By
BERNARD A. GOLDING,
Counsel for Petitioner

February , 1945.

